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§ 502.23 Notice of appearance; substitution and withdrawal of representative.

(a) Upon filing of a complaint instituting proceedings or filing of an answer to an order or complaint, the party filing shall notify the Commission of the name(s), address(es), telephone number(s), and email address(es) of the person or persons who will represent the party in the pending proceeding. Each person who appears in a representative capacity in a proceeding must deliver a written notice of appearance to the Secretary stating for whom the appearance is made. Such notice must indicate whether the representative wishes to be notified of notices, orders and decisions by either email or facsimile transmission. All appearances shall be noted in the record. Motions for leave to intervene must indicate the name(s), address(es), telephone number(s), and email address(es) of the person or persons who will represent the intervenor in the pending proceeding if the motion is granted.

(b) A Notice of Appearance should follow the form set forth in Exhibit No. 1 to this subpart.

(c) An attorney must represent in the Notice of Appearance that he is admitted to practice and in good standing. A non-attorney must describe his or her authority to act in such capacity.

(d) If an attorney or other representative of record is superseded, there shall be filed a stipulation of substitution signed both by the attorney(s) or representative(s) and by the party, or a written notice from the party to the Commission with a Notice of Appearance included. Substitution of counsel or representative will not, by itself, be considered good cause for delaying a proceeding.

(e) If an attorney wishes to withdraw from representing a party, and written consent is not obtained, or if the party is not otherwise represented, the withdrawing attorney shall file an appropriate motion seeking permission to withdraw and provide appropriate reasons for making the motion. Such motion will be decided in consideration of the factors and standards set forth in Rule 1.16 of the American Bar Association's Model Rules of Professional Conduct and by the courts. [Rule 23.]

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[64 FR 7807, Feb. 17, 1999, as amended at 78 FR 45069, July 26, 2013]

§ 502.24 Practice before the Commission defined.

(a) Practice before the Commission shall be deemed to comprehend all matters connected with the presentation of any matter to the Commission, including the preparation and filing of necessary documents, and correspondence with and communications to the Commission, on one's own behalf or representing another. (See § 502.32).

(b) The term "Commission" as used in this subpart includes any bureau, division, office, branch, section, or unit of the Federal Maritime Commission and any officer or employee of such bureau, division, office, branch, section, or unit. [Rule 24.]

[49 FR 44369, Nov. 6, 1984, as amended at 64 FR 7807, Feb. 17, 1999]

§ 502.25 Presiding officer.

(a) *Definition.* Presiding officer includes, where applicable, one or more members of the Commission or an administrative law judge.

(b) *Functions and powers.* The officer designated to hear a case shall have the following powers:

(1) *Notices of hearing, subpoenas, depositions, pleadings and scope of proceedings.* To arrange and give notice of hearing; sign and issue subpoenas authorized by law; take or cause depositions to be taken; rule upon proposed amendments or supplements to pleadings; and, delineate the scope of a proceeding instituted by order of the Commission by amending, modifying, clarifying, or interpreting said order.

(2) *Alternative means of dispute resolution and conferences for settlement or simplification of issues.* To inform the parties as to the availability of one or more alternative means of dispute resolution, encourage use of such methods, and require consideration of their use at an early state of the proceeding; hold conferences for the settlement or simplification of the issues by consent of the parties or by the use of alternative means of dispute resolution; transmit the request of parties for the

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appointment of a mediator or settlement judge, as provided by § 502.91; and require the attendance at any such conference pursuant to 5 U.S.C 556(c)(8), of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy.

(3) *Hearings, evidence, procedural requests, motions, oaths and affirmations, and witnesses.* To regulate the course of a hearing; prescribe the order in which evidence shall be presented; dispose of procedural requests or similar matters; hear and rule upon motions; administer oaths and affirmations; examine witnesses; direct witnesses to testify or produce evidence available to them; rule upon offers of proof and receive relevant, material, reliable, and probative evidence; act upon motions to intervene; permit submission of facts, arguments, offers of settlement, and proposals of adjustment; and, if the parties so request, issue formal opinions providing tentative evaluations of the evidence submitted; hear oral argument at the close of the testimony.

(4) *Time management and other matters.* To fix the time for filing briefs, motions, and other documents to be filed in connection with hearings and the administrative law judge's decision thereon, except as otherwise provided by the rules in this part; act upon petitions for enlargement of time to file such documents, including answers to formal complaints; and dispose of any other matter that normally and properly arises in the course of proceedings.

(5) *Exclusion of persons from a hearing.* To exclude any person from a hearing for disrespectful, disorderly, or inappropriate language or conduct.

(c) *Functions and powers pursuant to Reorganization Plan No. 7 of 1961.* All of the functions delegated in subparts A to Q and subpart T of this part, inclusive, to the Chief Judge, presiding officer, or administrative law judge include the functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter, pursuant to the provisions of section 105 of Reorganization Plan No. 7 of 1961. [Rule 147.]

(d) *Designation of administrative law judge.* An administrative law judge will

be designated by the Chief Administrative Law Judge to preside at hearings required by statute, in rotation so far as practicable, unless the Commission or one or more members thereof shall preside, and will also preside at hearings not required by statute when designated to do so by the Commission.

(e) *Attachment of functions.* In proceedings handled by the Office of Administrative Law Judges, its functions shall attach:

(1) Upon the service by the Commission of a Notice of Filing of Complaint and Assignment of complaint filed pursuant to § 502.62, or § 502.182, or upon referral under subpart T of this part; or

(2) Upon reference by the Commission of a petition for a declaratory order pursuant to § 502.68; or

(3) Upon forwarding for assignment by the Office of the Secretary of a special docket application pursuant to § 502.271; or

(4) Upon the initiation of a proceeding and ordering of hearing before an administrative law judge pursuant to § 502.63.

(f) *Unavailability.* If the presiding officer assigned to a proceeding becomes unavailable, the Commission, or Chief Judge (if such presiding officer was an administrative law judge), shall designate a qualified officer to take his or her place. Any motion predicated upon the substitution of a new presiding officer for one originally designated shall be made within ten (10) days after notice of such substitution.

(g) *Disqualification of presiding or participating officer.* Any presiding or participating officer may at any time withdraw if he or she deems himself or herself disqualified, in which case there will be designated another presiding officer. If a party to a proceeding, or its representative, files a timely and sufficient affidavit of personal bias or disqualification of a presiding or participating officer, the Commission will determine the matter as a part of the record and decision in the case. [Rule 25.]

[78 FR 45069, July 26, 2013]

§ 502.26 Attorneys at law.

Attorneys at law who are admitted to practice before the Federal courts or